IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.750 OF 2007

Mr.Bipin P.Sanghvi & Anr. .. Appellants
(Orig. Plaintiffs)

Versus

Shri Krupa Developers & Anr... Respondents
(Orig. Defendants)

Shri Shyam K. Sthalekar for the Appellants
Shri Bharat Joshi for the Respondent No.1

CORAM : S.R.SATHE,J.
DATED : 15/10/2007

P.C. :-

1. Heard both the learned Advocates.

2. Perused the papers.

3. Appellants-original Plaintiffs have filed the present appeal as the Trial Court refused to grant temporary injunction in their favour.

4. Appellants are residing in Shri Kripa Prasad Co-operative Housing Society since the year 1982. The said Society i.e. defendant No.2 entered into development agreement with defendant No.1, as a result of which, the defendant No.1 agreed to provide

alternate accommodation to the members including Plaintiffs till new construction is carried out at the suit plot. According to Plaintiffs, they are entitled to an area of 818 sq.ft. in the newly constructed building because according to them a terrace admeasuring 240 sq.ft. attached to their existing flat is owned by them and thus, they are entitled to get total carpet area of 818 sq.ft.

5. Plaintiffs, therefore filed suit for declaration and mandatory injunction directing defendant No.1 to execute an agreement in respect of 818 sq.ft. area in favour of Plaintiffs. They also prayed that defendants be restrained from demolishing the suit structure and carrying out further development.

6. Application for temporary injunction was opposed by defendant Nos.1 and 2. Both of them contended that Plaintiffs are not at all entitled to get an area of 818 of sq.ft. According to them, Plaintiffs are only entitled for 622 sq.ft., as mentioned in Plaintiff's agreement. It was also

contended that Plaintiffs have not made out any prima facie case and balance of convenience is also not in favour of Plaintiffs.

7. After hearing arguments of both the learned Advocates, learned Trial Judge came to the conclusion that Plaintiffs have failed to make out any prima facie case and the balance of convenience is not in their favour. Naturally, he rejected Plaintiff's application.

8. The above mentioned order is challenged by the original Plaintiffs in this appeal. There is not even a single document produced by the Plaintiff to show that they are in fact entitled to get an area of 818 sq.ft. in the proposed new building. Nor there is anything to show that alleged terrace was owned by Plaintiffs. On the contrary, agreement between Plaintiffs and defendants clearly go to show that Plaintiffs are entitled to get an area of 622 sq.ft. in the proposed new building. Admittedly, since the year 2004, Plaintiff had taken part in negotiations which took place between defendant Nos.1 and 2 regarding development of the property. Not only that but

admittedly, Plaintiffs have actually accepted cheque issued by defendant No.1 for compensation or amount in lieu of alternate accommodation. So, having regard to all these aspects, the learned Trial Judge has rightly observed that Plaintiffs have failed to make out any prima facie case to show that they are entitled to get an area of 818 sq.fts. in proposed new building.

9. It is also very clear that if temporary injunction as prayed is granted then the entire development process will be stalled. Not only defendant No.1 but all other members of the defendant No.2 Co-operative Housing Society would be put to great loss and hardship. So, I have no hesitation to hold that the learned Trial Judge has rightly considered the material on record and correctly rejected Plaintiff's application for temporary injunction. There is no substance in the present appeal.

Hence, the appeal is dismissed in limine.

(S.R.SATHE,J.)